

### **REMARKS**

Claims 9 – 17 are presently pending. The Office Action asserts the following:

Claims 11 and 13 were objected to for alleged “informalities”;

Claims 9 – 11, 15, and 17 were rejected under 35 U.S.C. §102 as allegedly anticipated by Lindgren (U.S. Patent No. 6,202,373);

Claims 12, 13, and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lindgren;

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lindgren in view of Anderson (U.S. Patent No. 4,344,257).

Claim 9 is an independent claim; Claims 10 – 17 are dependent claims.

Applicants respectfully traverse the rejection.

### **“Informalities”**

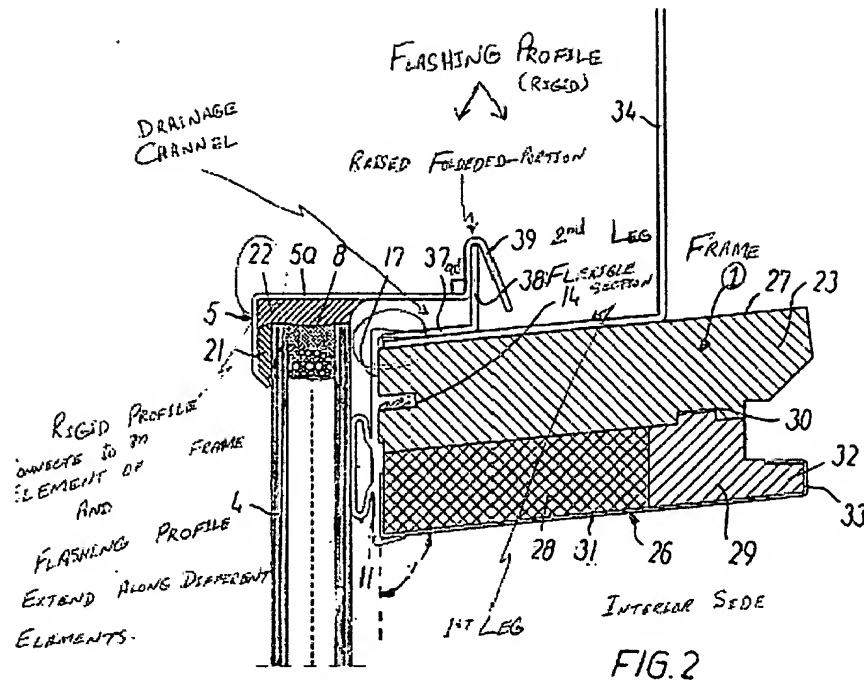
The Office Action states, “Claim 11 is objected to because of the following informalities: ‘by crimping’ in line 2, is a method used to have a folded portion; and in an article claim a final product is examined. Appropriate correction is required.”

Similarly, the Office Action states, “Claim 13 is objected to because of the following informalities: ‘crimping and adhesion’ in line 2, are methods used to have an attachment and a folded portion; and in an article claim a final product is examined. Appropriate correction is required.”

Applicants note, however, that Claims 11 and 13 include no errors requiring correction, and they particularly point out and distinctly claim the subject matter which is regarded as the inventions. Accordingly, Applicants respectfully decline the invitation to amend Claims 11 and 13. Applicants are well aware that they have made apparatus claims, not method claims. However, Applicants are also well aware that these claims described apparatuses. For example, if the limitation of Claim 11 had provided, instead, "wherein the flexible section is attached to the raised folded portion by screws, glue, rivets, or welding," no such alleged "informality" would have existed. Similarly, for the limitation of Claim 11 to provide, "wherein the flexible section is attached to the raised portion by crimping," likewise no such alleged "informality" exists. "Crimping" can be a noun as well as a verb; Applicants are entitled to be their own lexicographers, and properly choose "crimping" as a noun. The same comments apply to Claim 13.

### **35 U.S.C. §102**

The Office Action rejected Claims 9 – 11, 15, and 17 under 35 U.S.C. §102 as allegedly anticipated by Lindgren. The Office Action even included the following drawing, presumably modified in handwriting by the Examiner:



To anticipate, every element and limitation of the claimed invention must be found in Lindgren. Karsten Mfg. Corp. v. Cleveland Golf Co., 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001); Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). A determination of invalidity based on anticipation under 35 U.S.C. § 102(b) requires a finding that “each and every limitation is found either expressly or inherently in a single prior art reference.” Celeritas Techs. Ltd. v. Rockwell Int’l Corp., 150 F.3d 1354, 1360, 47 USPQ2d 1516, 1522 (Fed. Cir. 1998). Although the Office Action states that Lindgren discloses certain aspects, Applicant respectfully disagrees.

With all due respect, it is completely unclear from the Examiner’s hand-modified drawing what the Examiner believes Lindgren discloses. If Applicants had submitted a drawing of such a quality with their initial application, the drawing would have been rejected immediately by the USPTO; Applicants should

not have to respond to an Office Action based so exclusively on a drawing of a quality that would not have been accepted by the USPTO. A written narrative description of the Examiner's rejection is required and should have been provided, and Applicants object to the rejection based on a hand-modified drawing. Applicants have no reason to believe that the Examiner would accept as adequate a hand-modified drawing as a full and complete reply to this Office Action; no valid reason exists for the Office Action itself, then, to consist almost exclusively of such a drawing. As with the Examiner's earlier Restriction Requirement, Applicants ought not be compelled to guess, at their peril, what the basis of the Examiner's actions might be.

Careful review of Lindgren shows that it does not read on Applicants' claims. From the Examiner's hand-modified drawing, perhaps the Examiner perceives either that component 38 or component 11 is the "flexible section." Either would be mistaken. Component 38 is described by Lindgren to be a "projecting wall portion." See Column 4, line 25. Component 38 therefore cannot be a "flexible section." Similarly, component 11 cannot be the "flexible section" claimed in Claim 9 by Applicants, because Lindgren describes component 11 as "retained in grooves 14-16" [see Column 2, lines 64 – 65] and therefore not "attached to the second flashing leg" as claimed by Applicants. In fact, there is no teaching in Lindgren of a "flexible section" attached to a second flashing leg.

Additionally, it appears from the hand-modified drawing that the Examiner believes that component 5 of Lindgren's Fig. 2 is a "rigid profile connected to an element of frame and flashing profile." Review of Lindgren, though, shows that

component 5 is not even part of the flashing – it is part of the window casing. See Column 2, lines 50 – 56.

If the Examiner believes Lindgren anticipates Claims 9 – 11, 15, and 17 on some other basis, the Examiner has not made such view clear, and Applicants request further explanation.

For at least these reasons, then, Lindgren does not anticipate Claim 9. Furthermore, Claims 10, 11, 15, and 17 depend from Claim 9, and therefore Lindgren cannot anticipate them, either. Moreover, nothing whatsoever in Lindgren shows a raised folded portion on a second flashing leg (Claim 10), a flexible section attached to a raised folded portion by crimping (Claim 11), a second leg defining a channel (Claim 15), or a rigid flashing profile connected to the top and bottom elements of a frame (Claim 17).

### **35 U.S.C. §103 – Claims 12, 13, and 16**

Claims 12, 13, and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lindgren.

As to Claims 12 and 13, the Office Action states, “It would have been obvious to one having ordinary skill in the art ... to use an adhesive for attaching the flexible portion to the folded portion in order to make the connection waterproof.”

Claims 12 and 13 require at least a second flashing leg with a raised folded portion, wherein an end of a flexible section is attached to the raised folded portion and extends outwardly and wherein the flexible section is attached to the raised folded portion by adhesion – Lindgren has no such elements

whatsoever. Therefore, it could not have been obvious to anyone to use adhesive, because there are no such components in the Lindgren device with which to use such adhesive.

Likewise, Claim 16 calls for a flexible section attached to the second flashing leg, which the device in Lindgren does not have, teach, or suggest.

For at least these reasons, Claims 12, 13, and 16 should be allowed over Lindgren.

### **35 U.S.C. §103 – Claim 14**

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lindgren in view of Anderson (U.S. Patent No. 4,344,257).

Claim 14 includes a flashing profile having a rigid section comprising a first and second flashing leg, the first flashing leg carried by one of the elements of the frame, the flashing profile having a flexible section attached to the second flashing leg of the rigid section, wherein the second flashing leg has a raised folded portion, and wherein an end of the flexible section is attached to the raised folded portion and extends outwardly, and wherein an end of the raised folded portion is turned down such that the end of the raised folded portion is substantially perpendicular with the first flashing leg.

No such structures or components are taught, suggested, or considered by Lindgren and Anderson, alone or in combination. For example, what the Examiner has labeled as a “raised folded portion” in the hand-modified drawing in the Office Action does not even exist on the flashing of the device in Lindgren, but instead is on casing 5.

Claim 14 is patentably distinct from Lindgren and Anderson.

Although Applicants may not have addressed each of the rejections to the dependent claims, Applicants further respectfully submit that the cited references fail to teach the required limitations and Applicants do not concede the propriety of the Office Action rejections to each.

Based on the foregoing remarks, Applicants respectfully submit that all issues raised in the Office Action have been fully addressed, and the application, including all pending claims, is in complete condition for allowance.

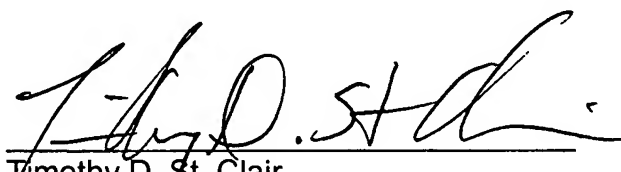
The Examiner is encouraged to contact the undersigned at his convenience should he have any questions regarding this matter, or to resolve any remaining issues.

Please charge any fees required this Request to Deposit Account No. 50-3959.

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P.A.

August 15, 2006

A handwritten signature in black ink, appearing to read "Timothy D. St. Clair", written over a horizontal line.

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